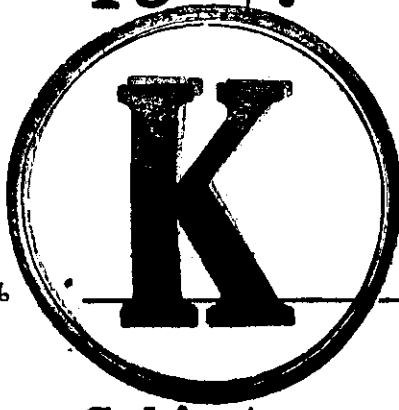


K

19⁴⁹.

File No. *O Motor Spirit 149*



Legal DEPARTMENT
A BRANCH

Subject:—

Opinions under the

Motor Spirit Rationing

orders 1941

*P.8
E*

File No. *O Motor Spirit 149*
Std. Sectt. Slip 24 B a.

322-17

C O N T E N T S

Legal Department File No. O.Motor Spirit/49

Sr. No.	Compilation No	Subject	Pages
1.	O.No. 2948 16-3-49	Motor Spirit Rationing Orders, 1941- Clause(d) Amendment of- to entitle Govt. to the benefit of the clause	1-
2.	O.No. 476-Conf dt. 27-7-49	Whether it would be feasible to prosecute the applicant for any offence under the Indian Penal Code	3-5
3.	O.No. 608-Conf dt 23-9-49	Whether a person can be prosecuted for using the vehicles without obtaining a certificate of fitness	7-13

NY
4/6
Wjr/1/6
5 Cs.

Office of the R.L.A.

Motor Spirit
Rationing Order,
1941 Clause
2 d)

The contention of the District Sales Manager, Standard Vacuum Oil Company is valid. The benefit of clause 34 of the Motor Spirit Rationing Order, 1941, would be available to a ~~dealer~~ dealer as defined in clause 2(d). Government as owner of Government petrol pumps from where petrol is issued for the public transport service cannot be considered a dealer within the meaning of clause 2(d). To entitle Government to the benefit of clause 34 the order will have to be suitably amended.

Sd/- P.M.Lad

cc.

14/3

Remembrancer of Legal Affairs.

U.R. to H.D. No. 2948 dated the 16th March 1949.

Mjr/31/5

4 Cs.

Confidential

In regard to the supply of ~~171~~ 171 units of petrol made by the Ahmedabad office of the Area Rationing Authority on 7-3-1947, it is admitted that the supply was not made upon any application by any one for that purpose but was made by the office of the Area Rationing Authority, Ahmedabad, on its own initiative upon the original application. Under clause 30 of the Motor Spirit Rationing Order, 1941, no person shall, while in possession of coupons obtained from an Area Rationing Authority in respect of a particular vehicle, or vehicles, obtain or attempt to obtain coupons from that or any ~~what~~ other Area Rationing Authority in respect of the same vehicle or vehicles without disclosing full particulars of the coupons in his possession. By "obtaining" we mean coming into possession or enjoyment of something by one's own effort or by request; to procure or gain as the result of purpose and effort. Dr. Murray's New English Dictionary vol. 7 P. 37. Although no specific application may have been made for these 171 units, they were sanctioned upon the original, application after calculating the difference; and it appears that Mr. Ramanlal Shah received the coupons on behalf of Mr. Zubeda Khanon. Presumably he must have presented the registration book at that time, as coupons cannot be issued unless the registration book is presented. It is true that the entry of the coupons issued by the Bombay Authority must have already been made in the registration book, and had the establishment of the Area Rationing Authority, Ahmedabad, been vigilant, they would not have issued the further ration of 171 coupons. However, if the person who presented the registration book and who received.

he coupon was Ramnath Shah who is in charge of the transport business, he had full knowledge that he was not entitled to these 171/ units; and by suppressing that fact, by presenting the registration book and receiving the coupons for units which he knew were exactly equal to the difference which was already issued to him, he can be said to have attempted to procure and to have procured by his own request or effort the supply of these units. It must be confessed that the point is arguable. But in my opinion the case should be taken to a Court of law for the infringement of clause 30 of the Motor Spirit Rationing Order, 1941

2. In the other case there is no legal requirement that an applicant for a temporary permit on a particular route ought to disclose the details of other permits he holds. The form prescribed for a temporary permit makes no provision for any such information. Nor can it be demonstrated as a matter of general evidence that the granting of a temporary permit on a particular route would have been affected by the disclosure of information regarding permits on other routes. It would not, therefore, be feasible to prosecute the applicant for any offence under the Indian penal Code.

Sd/- P.H.Lnd

26/7

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 475 dated 27th July 1949.

Mjr/31/5

4 Cs.

Office of the R.E.A.

The three heads of prosecution in this case are as follows:-

- (1) Using the vehicles without obtaining a certificate of fitness.
- (2) Placing the vehicles in an unsafe condition.
- (3) Using petrol coupons for a purpose other than that to which the coupons related or other than that specified in the application in response to which the coupons were issued.

2. One general observation must first be made in that it is difficult in this case to fix the responsibility upon the Chief Officer or upon any particular officer for any of these offences. Under the allocation of work, the motor vehicles will primarily be the concern of the special mechanic, at least in relation to their safety or fitness. The mechanic no doubt tries to pass on the blame to his superior officers, particularly the Health Officer, and insists that he had drawn the attention of the Health Officer to the fact that the certificate of fitness had not been renewed, and that the vehicles were not in a safe condition. When the case goes to a court of law, if the mechanic is made a co-accused, his statement will not be available for use at all. On the other hand, if he is made a witness, his evidence would naturally be regarded as tainted, since he too is equally responsible for the offence. Besides his statement, there is no evidence to show that the Health Officer aware of the condition of the vehicles. Similarly, as regards the diversion of use of the petrol, the Chief Officer's contention is that he had left the matter to the Health Officer who in his turn had left it to the

Sanitary Inspector. Considering that these vehicles were used for the health department purpose, and the petrol was also used for that same purpose (including even sewage pump purpose), it is not unlikely that the Court would hold that Sanitary Inspector immediately responsible for the use of the petrol. No doubt, the Health Officer had to sign the Register, and to that extent he may be said to have knowledge of the fact that the two petrol accounts were mixed up, and that ~~the two petrol accounts were mixed up,~~ ^{petrol was being diverted from one use to} the other. But that would not be sufficient to establish his guilt.

3. (1) Coming next to each head of the prosecution, the first is not so much a contravention of section 38 as such, but is really a contravention of section 22 of the Motor Vehicles Act. Section 38 simply deals with the certificate of fitness and lays down that a transport vehicle shall not be deemed to be validly registered for the purpose of section 22, unless it carries a certificate of fitness in form H. In other words, using a transport vehicle without the fitness certificate is using the vehicle without registration, which is a contravention of section 22. Section 22 says that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven etc. The Chief officer of a municipality cannot be called the owner of the vehicle. The ownership vests in the municipality itself, and in the absence of a provision, which has now been inserted in a number of enactments making directors, managers, officers etc. constructively liable where the offence is committed by a body corporate, it would not be feasible to prosecute the Chief Officer for contravening the provisions of section 22 merely because the vehicle stands in his name. The definition of

11

"owner" does not include the person in whose name the registration stands.

(2) It is more feasible to maintain a prosecution for the offence under section 121. Because, the words in that section are "Any person who drives or causes or allows to be driven in any public place a motor vehicle while the vehicle has any defect..... which such person knows or could have discovered by the exercise of ordinary care and which is calculated to render the driving of the vehicle a source of danger to persons and vehicles using such place. Here again, it would be eminently possible for the Chief Officer or the Health Officer to say that it was not his duty to attend to defects in motor vehicles and that the primary responsibility must rest upon the special mechanic who was engaged for this purpose. If any person is to be prosecuted, it would be the mechanic, unless the Court is prepared to accept his testimony that despite the ~~fact~~ fact that he drew the attention of the Health Officer or the Chief Officer to the defect, he permitted the use of the vehicles concerned.

(3) As regards the use of petrol, there is undoubtedly a technical violation of rule 28(a). It must, however, be borne in mind that there is no evidence to show that the petrol was either misappropriated or was diverted to non-municipal purposes or found its way in the black market although that seems to be the suspicion. No court would take serious notice of an offence which merely consists in diverting petrol given for one municipal purpose to another municipal purpose and would punish the officers of the municipality for that purpose.

4. In these circumstances, I am not disposed to recommend a prosecution in these cases.

last offence is technical. The first two will be difficult of proof both on questions of fact and in law.

5. The real suspicion seems to be that by these irregular methods the officers concerned misappropriated the petrol and might have even taken it to the black market. If that be so, the investigation should be pursued along those lines with a view to collecting satisfactory evidence.

6. In any case, if that cannot be done, now that the municipality has been superseded, the Administrator can certainly take departmental action against the officers for not getting the fitness certificate for allowing the vehicles to be used in an unsafe condition, for not keeping proper accounts and for diverting petrol given for one purpose to another purpose. The evidence which will not be available at a trial may be used in a departmental inquiry for fixing responsibility.

O.C.

Sd/- P.M.Lad
21/9/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 608-Conf1. dated the 23rd September 1949.

Mjr/31/5

L. Co.